

## Chapter 20.07 SCHOOL IMPACT MITIGATION FEE PROGRAM

### Sections:

<a href="#">20.07.010</a>	Title.
<a href="#">20.07.020</a>	Purpose.
<a href="#">20.07.030</a>	Words defined by RCW 82.02.090.
<a href="#">20.07.040</a>	School mitigation definitions.
<a href="#">20.07.045</a>	<u>School Impact fee Eligibility</u>
<a href="#">20.07.050</a>	School capital facilities plan.
<a href="#">20.07.055</a>	<u>Expiration of school capital facilities plans</u>
<a href="#">20.07.060</a>	Updating of school district plan.
<a href="#">20.07.061</a>	<u>Minimum requirements for school capital facilities plans</u>
<a href="#">20.07.065</a>	<u>Impact fee calculation formula</u>
<a href="#">20.07.070</a>	City adoption.
<a href="#">20.07.075</a>	<u>City adoption of school impact fees</u>
<a href="#">20.07.080</a>	Delays.
<a href="#">20.07.090</a>	Fee required.
<a href="#">20.07.100</a>	Impact fee schedule – Exemptions.
<a href="#">20.07.110</a>	Impact fee limitations.
<a href="#">20.07.120</a>	Fee determination.
<a href="#">20.07.130</a>	Credit for in-kind contributions.
<a href="#">20.07.135</a>	Exemptions.
<a href="#">20.07.140</a>	SEPA mitigation and other review.
<a href="#">20.07.150</a>	Collection and transfer of fees.
<a href="#">20.07.160</a>	Use of funds.
<a href="#">20.07.170</a>	Refunds.
<a href="#">20.07.180</a>	Administrative adjustment of fee amount.
<a href="#">20.07.190</a>	Appeals of decisions – Procedure.
<a href="#">20.07.200</a>	Vesting of school mitigation.
<a href="#">20.07.210</a>	Conflict with other ordinances and codes.
<a href="#">20.07.220</a>	Savings provision.

### **20.07.010 Title.**

This chapter shall be hereinafter known as the “school impact mitigation fee program **ordinance**,” may be cited as such, and will be hereinafter referred to as “this chapter.” (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

### **20.07.020 Purpose.**

This chapter provides the necessary regulatory mechanism for determining school impact mitigation fees and that a property owner meets the concurrency provisions of the comprehensive plan for development purposes and which ensures that adequate public facilities

at acceptable levels of service are available to support the development's impact. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.030 Words defined by RCW 82.02.090.**

Words used in this chapter and defined in RCW 82.02.090 shall have the same meaning assigned in RCW 82.02.090 unless a more specific definition is contained in MMC [20.07.040](#). (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.040 School mitigation definitions.**

"Average assessed value" means the average assessed value by dwelling unit type of all residential units constructed within the district.

"Boeckh Index" means the current construction trade index of construction costs for each school type.

"Capacity" means the number of students the district's facilities can accommodate district-wide, as determined by the district.

"Capital facilities" means school facilities identified in the district's capital facilities plan and are "system improvements" as defined by the GMA as opposed to localized "project improvements."

"Capital facilities plan" means the district's facilities plan adopted by the school board consisting of those elements meeting the requirements of the GMA.

"City" means the city of Monroe.

"City council" means the Monroe city council.

"Classrooms" mean educational facilities of the district required to house students for its basic educational program. The classrooms are those facilities the district determines are necessary to best serve its student population. Specialized facilities as identified by the district, including but not limited to gymnasiums, cafeterias, libraries, administrative offices, and child care centers, shall not be counted as classrooms.

"Construction cost per student" means the estimated cost of construction of a permanent school facility in the district for the grade span of school to be provided, as a function of the district's design standard per grade span.

"County" means Snohomish County.

"Design standards" means the space required, by grade span and taking into account the requirements of students with special needs, which is needed in order to fulfill the educational goals of the district as identified in the district's capital facilities plan.

“Developer” means the proponent of a development activity, such as any person or entity who owns or holds purchase options or other development control over property for which development activity is proposed.

“Development” means all subdivisions, short subdivisions, conditional or special use permits, binding site plan approvals, rezones accompanied by an official site plan, or building permits (including building permits for multifamily and duplex residential structures, and all similar uses) and other applications requiring land use permits or approval by the city of Monroe.

“Development activity” means any residential construction or expansion of a building, structure or use of land, or any other change in use of a building, structure, or land that creates additional demand and need for school facilities, but excluding building permits for attached or detached accessory apartments, and remodeling or renovation permits which do not result in additional dwelling units. Also excluded from this definition is “housing for older persons” as defined by 46 USC 3607, when guaranteed by a restrictive covenant, and new single-family detached units constructed on legal lots created prior to May 1, 1991.

“Development approval” means any written authorization from the city which authorizes the commencement of a development activity.

“District property tax levy rate” means the district’s current capital property tax rate per thousand dollars of assessed value.

“Dwelling unit type” means (1) single-family residences, (2) multifamily, one-bedroom apartment or condominium units, and (3) multifamily multiple-bedroom apartment or condominium units.

“Encumbered” means impact fees identified by the district as being committed as part of the funding for a school facility for which the publicly funded share has been assured, development approvals have been sought, or construction contracts have been let.

“Estimated facility construction cost” means the planned costs of new schools or the actual construction costs of schools of the same grade span recently constructed by the district, including on-site and off-site improvement costs. If the district does not have this cost information available, construction costs of school facilities of the same or similar grade span within another district are acceptable.

“Facility design capacity” means the number of students each school type is designed to accommodate, based on the district’s standard of service as determined by the district.

“Grade span” means a category into which a district groups its grades of students (e.g., elementary, middle or junior high, and high school).

“Growth Management Act (GMA)” means the Growth Management Act, Chapter 17, Laws of the State of Washington of 1990, 1st Ex. Session, as now in existence or as hereafter amended.

“Impact fee schedule” means the table of impact fees to be charged per unit of development, computed by the formula adopted under this chapter, indicating the standard fee amount per dwelling unit that shall be paid as a condition of residential development within the city.

“Interest rate” means the current interest rate as stated in the Bond Buyer Twenty-Bond General Obligation Bond Index.

“Land cost per acre” means the estimated average land acquisition cost per acre (in current dollars) based on recent site acquisition costs, comparisons of comparable site acquisition costs in other districts, or the average assessed value per acre of properties comparable to school sites located within the district.

“Multifamily unit” means any residential dwelling unit that is not a single-family unit as defined by this chapter.

“Permanent facilities” means facilities of the district with a fixed foundation, which are not relocatable facilities.

“Relocatable facilities” means any factory-built structure, transportable in one or more sections, that is designed to be used as an education space and is needed to prevent the overbuilding of school facilities, to meet the needs of service areas within the district or to cover the gap between the time that families move into new residential developments and the date that construction is completed on permanent school facilities.

“Relocatable facilities cost” means the total cost, based on actual facilities costs incurred by the district, for purchasing and installing portable classrooms.

“Relocatable facilities student capacity” means the rated capacity of a typical portable classroom used for a specified grade span.

“School impact fee” means a payment of money imposed upon development, as a condition of development approval, to pay for school facilities needed to serve new growth and development. The school impact fee does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, or the cost of reviewing independent fee calculations.

“Single-family unit” means any detached residential dwelling unit designed for occupancy by a single-family or household.

“Standard of service” means the standard adopted by the district which identifies the program year, the class size by grade span and taking into account the requirements of students with

special needs, the number of classrooms, the types of facilities the district believes will best serve its student population, and other factors as identified by the district. The district's standard of service shall not be adjusted for any portion of the classrooms housed in relocatable facilities which are used as transitional facilities or any other specialized facilities housed in relocatable facilities.

"State match percentage" means the proportion of funds that are provided to the district for specific capital projects from the state's Common School Construction Fund. These funds are disbursed based on a formula which calculates district-assessed valuation per pupil relative to the whole state-assessed valuation per pupil to establish the maximum percentage of the total project eligible to be paid by the state.

"Student factor (student generation rate)" means the number of students of each grade span (elementary, middle/junior high, high school) that a district determines are typically generated by different dwelling unit types within the district. The district will use a survey or statistically valid methodology to derive the specific student generation rate. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.045 School impact fee eligibility.**

Any school district serving the City of Monroe shall be eligible to receive school impact fees upon adoption by the City Council;1 of a capital facilities plan for the district by reference as part of the capital facilities element of the comprehensive plan.

#### **20.07.050 School capital facilities plan.**

The ~~Monroe School District's capital facilities plan and the Snohomish School District's school capital facilities plans~~ shall be included in and shall be considered as a part of the capital facilities plan element of the city of Monroe comprehensive plan as adopted by the city council. ~~School mitigation fees shall be based upon this element of the current city comprehensive plan.~~ (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.055 Expiration of school capital facilities plans.**

For purposes of impact fee eligibility, a district's capital facilities plan shall expire two years from the date of its adoption by the City of Monroe, or when an updated plan is adopted by the City of Monroe, whichever date first occurs.

#### **20.07.060 Updating of school district plans.**

A. School district plans shall be transmitted to the city at least ~~sixty-ninty~~ days prior to the ~~biannual public hearing date for the capital facilities element of the city comprehensive plan~~ biennial expiration date. The plan must be submitted to the state by the city as a part of the city comprehensive plan review required under the GMA; consequently, the district plan must meet any submittal deadline imposed by the state. The city shall notify the affected school

district of the schedule for review of the capital facilities element of the comprehensive plan at such time as the schedule is established.

~~B.—School districts shall amend their facilities plan on a biannual basis in conjunction with the city biannual amendment to the comprehensive plan. However, the affected school district may amend its facilities plan on an annual basis if the district finds it necessary to adjust impact fees. The city may not consider such an amendment more than once per year unless otherwise allowed by state law. The plan shall require approval by the city council as an amendment to the city's comprehensive plan.~~

EB. The timing of amendments to ~~either school district's~~ school impact fees shall be commensurate with the current amendment schedule adopted by Snohomish County. Conformance with the county schedule is designed to ensure a uniform procedural change throughout both the incorporated and unincorporated areas of the school district. (Ord. 010/2010 § 1 (Exh. A); Ord. 033/2004; Ord. 1205, 2000)

#### **20.07.061 Minimum requirements for school capital facilities plans**

To be eligible of school impact fees, districts must submit capital facilities plans to the city pursuant to the procedure established by this chapter. District capital facilities plans shall contain data and analysis necessary and sufficient to meet the requirements of the Growth Management Act. The plans must provide sufficient detail to allow computation of school impact fees according to the formula contained in this chapter.

#### **20.07.065 Impact fee calculation formula**

(1) General. The formula in this section provides the basis for the impact fee schedule for each district serving the city. District capital facilities plans shall include a calculation of its proposed impact fee schedule, by dwelling unit type, utilizing this formula. In addition, a detailed listing and description of the various data and factors needed to support the fee calculation is included herein.

(2) Determination of projected school capacity needs. Each district shall determine, as part of its capital facilities plan, projected school capacity needs for the current year and for not less than the succeeding five-year period. The capital facilities plan shall also include estimated capital costs for the additional capacity needs, and those costs provide the basis for the impact fee calculations set forth in this section.

(3) Cost calculation by element. The fees shall be calculated on a "per dwelling unit" basis, by "dwelling unit type" as set forth below.

(a) Site acquisition cost element.

{[B(2) x B(3)] ÷ B(1)} x A(1) = Site Acquisition Cost Element

Where:

B(2) = Site Size (in acres, to the nearest 1/10th)

B(3) = Land Cost (Per Acre, to the nearest dollar)

B(1) = Facility Design Capacity

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added with the result being the "Total Site Acquisition Cost Element" for purposes of the final school impact fee calculation below.

(b) School construction cost element.

$[C(1) \div B(1)] \times A(1) = \text{School Construction Cost Element}$

Where:

C(1) = Estimated Facility Construction Cost

B(1) = Facility Design Capacity

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added and multiplied by the square footage of permanent facilities divided by the total square footage of school facilities, with the result being the "Total School Construction Cost Element" for purposes of the final school impact fee calculation below.

(c) Relocatable facilities (portables) cost element.

$[E(1) \div E(2)] \times A(1) = \text{Relocatable Facilities Cost Element}$

Where:

E(1) = Relocatable Facilities Cost

E(2) = Relocatable Facilities Student Capacity

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added and multiplied by the square footage of relocatable facilities divided by the total square footage of school facilities, with the result being the "Total Relocatable Facilities Cost Element" for purposes of the final school impact fee calculation below.

(4) Credits against cost calculation - mandatory. The following monetary credits shall be deducted from the calculated cost elements defined above for purposes of calculating the final school impact fee below.

(a) State match credit.

$D(1) \times D(3) \times D(2) \times A(1) = \text{State Match Credit}$

Where:

D(1) = Boeckh Index

D(3) = Square footage of school space allowed per student, by grade span, by the Office of the Superintendent of Public Instruction

D(2) = State Match Percentage

A(1) = Student Factor (for each dwelling unit type)

The above calculation shall be made for each of the identified grade levels (e.g. elementary, middle, junior high and/or senior high). The totals shall then be added with the result being the "Total State Match Credit" for purposes of the final school impact fee calculation below.

(b) Tax payment credit.

$\{[(1 + F(1))^{10}] - 1\}$

$\{F(1)(1+F(1))^{10}\} \times F(2) \times F(3) = \text{Tax Credit}$

Where:

F(1) = Interest Rate

F(2) = District Property Tax Levy Rate

F(3) = Average Assessed Value (for each dwelling unit type)

(5) Adjustments against cost calculation - elective by district. Recognizing that the availability of other sources of public funds varies among districts, each district may provide an additional credit against school impact fees which the district determines will provide the best balance in system improvement funding within the district, between school impact fees and other sources of local public funds available to the district. This adjustment may reduce, but may not increase, the school impact fee from the amount determined by application of the elements identified above. The adjustment, if any, applied by the district shall be specified within the district's capital facilities plan adopted by the county.

(6) Calculation of total impact fee.

(a) The total school impact fee, per dwelling unit, assessed on a development activity shall be the sum of:

Total Site Acquisition Cost Element

Total School Construction Cost Element

Total Relocatable Facilities Cost Element minus the sum of:

Total State Match Credit

Total Tax Payment Credit

Elective Adjustment by District expressed in Total Dollars per Dwelling Unit, by Dwelling Unit Type.

(b) The total school impact fee obligation for each development activity pursuant to the school impact fee schedule of this ordinance shall be calculated as follows:

Number of Dwelling Units, by Dwelling Unit Type

multiplied by

School Impact Fee for Each Dwelling Unit Type

less

the value of any in-kind contributions proposed by the school developer and accepted by the school district, as provided in MMC 20.07.130.

**20.07.070 City adoption of school capital facilities plans.**



Upon receiving a recommendation from the hearing authority on the affected school district's amendments to its capital facilities plan, the city council shall consider adoption of said plan or amendment by reference as part of the capital facilities element of the city's comprehensive plan. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.075 City adoption of school impact fees.**

The Monroe City Council will establish the school impact fees for residential development based on the formula contained in this chapter. The City declines to adopt the proposed impact fee schedules contained in the school facilities plans, disclaims any binding effect of the proposed impact fee schedules contained in the school facilities plans. The school impact fee shall be one-half of the amount calculated by each school district in its respective capital facilities plan in accordance with the formula identified in MMC 320.07.065 .

**20.07.080 Delays.**

If ~~either a~~ school district fails to submit an updated capital facilities plan in a timely manner, the city shall not be obligated to complete review prior to the city's comprehensive plan amendment date. If an updated capital facilities plan has not been adopted by the city council prior to the existing plan's expiration date, due to the affected school district's failure to submit an updated plan, that school district shall be ineligible to receive school impact fees until the updated plan has been adopted by the city council. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.090 Fee required.**

Each development activity, as a condition of approval, shall be subject to the impact fee established pursuant to this ~~section~~chapter. ~~School impact fees shall be calculated in accordance with the formulas set forth in either the current Monroe School District No. 103's Capital Facilities Plan or the current Snohomish School District Capital Facilities Plan, as adopted into and made a part of the capital facilities element of the city of Monroe comprehensive plan. (Ord. 010/2010 § 1 (Exh. A); Ord. 034/2008 § 1; Ord. 019/2007 § 1; Ord. 033/2004; Ord. 014/2004; Ord. 1277, 2002; Ord. 1205, 2000)~~

**20.07.100 Impact fee schedule – Exemptions.**

A.

<u>School District</u>	<u>Single Family</u>	<u>Multi-Family 1-Bedroom per dwelling unit</u>	<u>Multi Family 2+ Bedrooms per dwelling unit</u>	<u>Duplexes and Townhomes</u>
<u>Monroe No. 103</u>	<u>\$1,984</u>	<u>\$0</u>	<u>\$3,172</u>	<u>\$3,172</u>
<u>Snohomish No. 201</u>	<u>\$896</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

~~The school impact fees specified in the affected school district's capital facilities plan and adopted by the city council shall constitute the city's schedule of school impact fees. The department shall, for the convenience of the public, keep available an information sheet summarizing the schedule of school impact fees.~~

B. The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low-income housing activities in accordance with RCW 82.02.060(2). "Low-income housing" is defined as follows: (1) low-income housing projects that are constructed by public housing agencies or private nonprofit housing developments; or (2) low-income residential units, rented or purchased, that are dedicated and constructed by private developers. To qualify for such exemption, the developer of such housing shall submit a petition to the director for consideration by the council prior to application for building permit. Conditions for such approvals shall be established by the council at the time of approval that, at a minimum, meet the requirements of RCW 82.02.060(2) and which shall also include a requirement for a covenant acceptable to the affected school district to assure the project's continued use for low-income housing. The covenant entered into by and between the developer and the affected school district shall be an obligation that runs with the land, and shall be recorded against the title of the real property upon which such housing is located in the real property records of Snohomish County. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.110 Impact fee limitations.**

A. School impact fees shall be imposed for the affected school district capital facilities that are reasonably related to the development under consideration, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the development, and shall be used for system improvements that will reasonably benefit the new development.

B. School impact fees must be expended or encumbered for a permissible use within six years of receipt by the affected school district.

C. To the extent permitted by law, school impact fees may be collected for capital facilities costs previously incurred to the extent that new growth and development will be served by the previously constructed capital facilities; provided, that school impact fees shall not be imposed to make up for any existing system deficiencies.

D. A developer required to pay a fee pursuant to RCW 43.21C.060 for district capital facilities shall not be required to pay a school impact fee pursuant to RCW 82.02.050 through 82.02.090 and this title for the same capital facilities.

E. A condition of eligibility shall be that the affected school district must provide documentation that it has petitioned every other county or city served by the district to establish a school impact fee or mitigation program. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.120 Fee determination.**

A. At the time of development approval, the city shall determine whether school impact fees will be due at the time of building permit issuance. Where such fees are due, the development approval shall state that the payment of school impact fees will be required prior to issuance of building permits. The amount of the fee due shall be based on the fee schedule in effect at the time of building permit issuance. Credit amounts and allocation of credits to be applied against the fees shall be determined at the time of development approval to the extent that information is reasonably available to make this determination. If information is not reasonably available, credit amounts may be deferred to a later date prior to building permit issuance by written decision of the community development director or his/her designee. If a subdivision is involved, any deferred final credit decision shall be issued by the community development director or his/her designee prior to final plan approval. The city may not approve a final plat until all adjustment requests and administrative appeals regarding credit amounts are resolved.

B. The final determination of a development activity's fee obligation under this section shall be made prior to the application for building permit. Said final determination shall include any credits for in-kind contributions. Final determinations may be appealed pursuant to the procedures established in MMC [20.07.190](#). (Ord. 010/2010 § 1 (Exh. A); Ord. 033/2004; Ord. 1205, 2000)

#### **20.07.130 Credit for in-kind contributions.**

A. A developer may request and the director may grant a credit against school impact fees otherwise due under this title, for the value of any dedication of land for, improvement to, or new construction of any capital facilities identified in the affected school district's capital facilities plan provided by the developer. Such requests must be accompanied by supporting documentation of the estimated value of such in-kind contributions. All requests must be submitted to the department in writing prior to its determination of the impact fee obligation for the development activity. Each request for credit will be immediately forwarded to the affected school district for evaluation.

B. Where the affected school district determines that a development activity is eligible for a credit for a proposed in-kind contribution, it shall provide the department and the developer with a letter setting forth the justification for and dollar amount of the credit, the legal description of any dedicated property, and a description of the development activity to which the credit may be applied. The value of any such credit may not exceed the impact fee obligation of the development activity in question.

C. Where there is agreement between the developer and the affected school district concerning the value of proposed in-kind contributions, their eligibility for a credit, and the amount of any credit, the director may: (1) approve the request for credit and adjust the impact fee obligation accordingly; and (2) require that such contributions be made as a condition of development approval. Where there is disagreement between the developer and the affected school district

regarding the value of in-kind contributions, however, the director may render a decision that can be appealed by either party pursuant to city administrative appeal procedures.

D. For subdivisions, PRDs and other large-scale developments where credits for in-kind contributions are proposed or required, it may be appropriate or necessary to establish the value of the credit on a per-unit basis as a part of the development approval. Such credit values will then be recorded as part of the plat or other instrument of approval and will be used in determining the fee obligation, if any, at the time of building permit issuance for development activity. In the event that such credit value is greater than the impact fee in effect at the time of permit issuance, the fee obligation shall be considered satisfied, and the balance of the credit may be transferable to future developments by the applicant with agreement by the affected school district. (Ord. 010/2010 § 1 (Exh. A); Ord. 033/2004; Ord. 1205, 2000)

#### **20.07.135 Exemptions.**

The following development activities shall be exempt from payment of school impact fees:

A. Reconstruction, remodeling or construction of the following activities, subject to the recording of a covenant or recorded declaration of restrictions precluding use of the property for other than the exempt purpose; provided, that if the property is used for a nonexempt purpose, the school impact fees then in effect shall be paid:

1. Construction or remodeling of transitional housing facilities or dwelling units that provide housing to persons on a temporary basis for not more than twenty-four months, in connection with job training, self-sufficiency training and human services counseling, the purpose of which is to help persons make the transition from homelessness to placement in permanent housing.

B. Rebuilding or replacement of an existing legally established dwelling unit(s) where no additional dwelling unit(s) is created.

C. Alteration or expansion:

1. Of an existing building where no additional residential units are created and where the use is not changed; and/or
2. The construction of any accessory building or structures.

D. Manufactured homes, where:

1. The installation of a replacement manufactured home on a lot or other such site where a school impact fee for such manufactured home has previously been paid pursuant to this chapter or where a manufactured home legally existed on such site on or prior to the effective date of the ordinance codified in this section.

2. The construction of any nonresidential building or structure or the installation of a nonresidential manufactured home. Any claim or exemption must be made no later than the time of application for a building permit or permit for manufactured home installation. Any claim not so made shall be deemed waived.

E. Condominium projects in which existing dwelling units are converted into condominium ownership where no new dwelling units are created.

F. Previous mitigation, where:

1. The development activity is exempt from the payment of an impact fee pursuant to RCW 82.01.010, due to mitigation of the same system improvement under the State Environmental Policy Act (SEPA).

2. The development activity's school impact fees have been mitigated pursuant to a condition of plan or PRD approval to pay fees, dedicate land or construct or improve school facilities, unless the condition of the plat or PRD approval provides otherwise; provided, that the condition of the plat or PRD approval predates the effective date of fee imposition as provided herein.

3. Any development activity for which school impacts have been mitigated pursuant to a voluntary agreement entered into with the affected school district and the city to pay fees, dedicate land or construct or improve school facilities, unless the terms of the voluntary agreement provide otherwise; provided, that the agreement predates the effective date of fee imposition as provided herein. (Ord. 010/2010 § 1 (Exh. A); Ord. 033/2004)

#### **20.07.140 SEPA mitigation and other review.**

A. The city shall review development proposals and development activity permits pursuant to all applicable state and city laws and regulations, including the State Environmental Policy Act (Chapter 43.21C RCW), the state subdivision law (Chapter 58.17 RCW) and the applicable sections of this code. Following such review, the city may condition or deny development approval as necessary or appropriate to mitigate or avoid significant adverse impacts to school services and facilities, to assure that appropriate provisions are made for school, school grounds, and safe student walking conditions, and to ensure that development is compatible and consistent with the district's services, facilities and capital facilities plan.

B. Impact fees required by this title for development activity, together with compliance with development regulations and other mitigation measures offered or imposed at the time of development review and development activity review, shall constitute adequate mitigation for all of a development's specific adverse environmental impacts on the school system for the purposes of this section. Nothing in this title prevents a determination of significance from being issued, the application of new or different development regulations and/or requirements for

additional environmental analysis, protection and mitigation measures to the extent required by applicable law. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.150 Collection and transfer of fees.**

A. School impact fees shall be due and payable to the city by the developer at the time of issuance of residential building permits for all development activities.

B. The affected school district, to receive school impact fees collected by the city, shall establish an interest-bearing account separate from all other school district accounts. The city shall deposit school impact fees in the appropriate district account within ten days after receipt, and shall contemporaneously provide the receiving district with a notice of deposit.

C. The affected school district shall institute a procedure for the disposition of impact fees and provide for an annual reporting to the city that demonstrates compliance with the requirements of MMC [20.07.160](#) and RCW 82.02.070, and other applicable laws. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.160 Use of funds.**

A. School impact fees may be used by the affected school district only for capital facilities that are reasonably related to the development for which they were assessed and may be expended only in conformance with the affected school district's adopted capital facilities plan.

B. In the event that bonds or similar debt instruments are issued for the advance provision of capital facilities for which school impact fees may be expended, and where consistent with the provisions of the bond covenants and state law, school impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the capital facilities provided are consistent with the requirements of this section.

C. The responsibility for assuring that school impact fees are used for authorized purposes rests with the affected school district. All interest earned on a school impact fee account must be retained in the account and expended for the purpose or purposes for which the school impact fees were imposed, subject to the provisions of MMC [20.07.170](#).

D. The affected school district shall provide the city an annual report showing the source and the amount of school impact fees received by the district and the capital facilities financed in whole or in part with those school impact fees. The annual report shall be submitted to the city collectively with the affected school district's capital facilities plan. If the affected school district has previously submitted a biannual plan, the annual report shall be due on the anniversary date of the previously submitted plan. If an annual report is not submitted as required, the city may withhold deposit of future impact fees until the annual report has been submitted to the city. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

**20.07.170 Refunds.**

A. School impact fees not spent or encumbered within six years after receipt by the affected school district shall, upon receipt of a proper and accurate claim, be refunded, together with interest, to the then-current owner of the property. In determining whether school impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. At least annually the city, pursuant to MMC [20.07.150](#), shall give notice to the last known address of potential claimants of any funds, if any, that it has collected that have not been spent or encumbered. The notice will state that any persons entitled to such refunds may make claims.

B. Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to city claim procedures. Such claims must be submitted to the director within one year of the date the right to claim the refund arises, or the date of notification provided for above, where applicable, whichever is later. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.180 Administrative adjustment of fee amount.**

A. Within fourteen days of issuance of a building permit by the city, a developer or the affected school district may appeal to the director for an adjustment to the fees imposed by this title. The director may adjust the amount of the fee, in consideration of studies and data submitted by the developer and the affected school district, if one of the following circumstances exists:

1. It can be demonstrated that the school impact fee assessment was incorrectly calculated;
2. Unusual circumstances of the development activity demonstrate that application of the school impact fee to the development would be unfair or unjust;
3. A credit for in-kind contributions by the developer, as provided for under this section, is warranted; or
4. Any other credit specified in RCW 82.02.060(1)(b) may be warranted.

B. To avoid delay pending resolution of the appeal, school impact fees may be paid under protest in order to obtain a development approval. Such written protest must be submitted at or prior to the time fees are paid, and will relate only to the specific fees identified in the protest. Failure to provide such written protest at the time of fee payment shall be deemed a withdrawal of any appeal to the director of community development.

C. Failure to exhaust this administrative remedy shall preclude appeals of the school impact fee pursuant to MMC [20.07.190](#). (Ord. 010/2010 § 1 (Exh. A); Ord. 033/2004; Ord. 1205, 2000)

#### **20.07.190 Appeals of decisions – Procedure.**

A. Any person aggrieved by a decision applying an impact fee under this title to a development activity may appeal such decision to the hearing examiner pursuant to provisions of MMC [21.60.010](#). Appeals of this title must be combined with the administrative appeal for the

underlying development approval. The impact fee amount specified in a building permit issuance shall be construed as subject to appeal under this section and a separate appeal must be filed for each and every permit issuance after each permit has been issued. The community development director or his/her designee may consolidate appeal hearings; provided, that no appeal hearing shall be scheduled more than ninety days after its impact fee decision unless agreed to by the person/entity that owes the fee. Only one appeal fee shall be required for consolidated appeals. All appeals filed under this section must be filed within the specified appeal period of the final decision applying an impact fee to a development activity, or a decision on an adjustment request to that decision, whichever comes later.

B. At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in MMC [20.07.180](#). Appeals shall be limited to the application of the impact fee provisions to the specific development activity and the provisions of this title shall be presumed valid.

C. The decision of the hearing examiner pursuant to this subsection shall be final and conclusive with an optional right of reconsideration as provided in MMC [21.50.080](#) unless appealed to the city council in accordance with Chapter [21.60](#) MMC. (Ord. 010/2010 § 1 (Exh. A); Ord. 003/2008 (Exh. E); Ord. 033/2004; Ord. 022/2004; Ord. 1205, 2000)

#### **20.07.200 Vesting of school mitigation.**

School mitigation for a proposed land use development shall not be vested at the time a development proposal is deemed complete, but rather at the time of issuance of a building permit. The applicant for a development proposal shall have the option of claiming vesting for school mitigation at the time an application is deemed complete, however school mitigation must then be paid on all lots of a final plat along with other vested mitigation prior to filing with the county. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.210 Conflict with other ordinances and codes.**

In cases of conflict between this chapter or any part thereof, and any part of any other existing or future ordinance or code, the most restrictive in each case shall apply. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)

#### **20.07.220 Savings provision.**

If any part of this chapter is held to be unconstitutional, it shall be construed to have been the legislative intent to pass the ordinance codified in this chapter without such unconstitutional part and the remainder of this chapter as to exclusion of such part shall be deemed and held to be valid as if the part had not been included herein. (Ord. 010/2010 § 1 (Exh. A); Ord. 1205, 2000)